

# **A Situation Analysis on Trade and Biodiversity From Knowledge to Action**

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This background document has been produced as part of the 3I-C project “Making trade work for conservation: an IUCN policy agenda”. It seeks to outline the most important linkages between trade liberalisation and biodiversity, while drawing out lessons and recommendations for the conservation policy community.

**In this draft stage, we would very much welcome comments on the analysis and recommendations in this document. Please send your feedback by email to [sebastian.winkler@iucn.org](mailto:sebastian.winkler@iucn.org) or contact PBIa by fax or mail (see below).**

**The final document will be printed in early 2005 and can be pre-ordered from PBIa.**

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The Policy, Biodiversity and International Agreements Unit (PBIa) is charged with enhancing the coherence and effectiveness of IUCN’s conservation policy work, including taking the lead on IUCN’s policy work on cross-cutting agreements and processes, especially the Convention on Biological Diversity, the UN Framework Convention on Climate Change and the multilateral trade system.

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IUCN is the world’s largest environmental knowledge network and has helped over 75 countries to prepare and implement national conservation and biodiversity strategies. IUCN is a multicultural, multilingual organization with 1000 staff located in 62 countries. Its headquarters are in Gland, Switzerland.

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## Executive Summary

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International trade can have both negative and positive impacts on biodiversity. In general, negative impacts occur when market structures make it more profitable to exploit biodiversity for trade than to conserve it or when dangerous substances or invasive alien species are being released by trade activities. These negative effects can be attenuated by internalising their costs into the price of the goods involved.

Trade can also have positive effects if it provides incentives for sustainable use of biodiversity and restrains unsustainable behaviour. Mechanisms to promote this include facilitated market access and certification.

This report investigates the links between trade and biodiversity, specific trade measures and their relation to global environmental governance. It recommends next steps for the conservation community to resolve possible conflicts between trade and biodiversity and introduces relevant institutional actors.

Trade in wild species and their derivatives is the most direct interface between trade and biodiversity. The Convention in International Trade in Endangered Species of Wild Flora and Fauna (CITES) places controls on the market for species listed in its Appendices. International trade in wildlife is estimated at 160 billion per year (excluding agricultural products) (see Table 0.1). International trade law does not generally permit discrimination between sustainably managed and unsustainably managed resources (PPMs), even though some narrow exceptions are in place and multilateral measures are more likely to withstand challenge at the World Trade Organisation (WTO) than unilateral ones.

Another challenge arises from goods that are harmful to biodiversity. WTO rules require sound scientific evidence to allow restriction of trade in these goods. A precautionary approach to regulation might face a defeat in WTO's dispute settlement.

The Doha Development Agenda mandates negotiations on enhanced market access for "environmental goods and services". While there is substantial disagreement about the definition of this term, it is most likely that these goods and services incorporate biodiversity conservation and the use of biological resources.

Investment policy is profoundly important to biodiversity, and like trade it can be both positive and negative. The core question is what kind of conditions relating to sustainability States can set for foreign investment or sectors with foreign investment. Substantial investment rules are incorporated in many regional and multilateral trade agreements and negotiations are proposed to extend the existing WTO rules. Liberalisation of services as an increasingly important subject of negotiation includes investment rules and covers several sectors closely linked to biodiversity.

Certification and labelling schemes are an important means to promote sustainably managed products, most prominently for forest, agriculture and marine products. Their compatibility with international trade rules remains unclear, and many countries fear that these instruments might limit their access to foreign markets.

Subsidies are a common market instrument with direct impacts on biodiversity. International trade rules discipline the use of subsidies from a market perspective without including environmental considerations. Negotiations in the WTO cover subsidies for fisheries and agriculture.

The Convention on Biological Diversity (CBD) notes that Intellectual Property Rights (IPRs) should support the Convention's objectives. As the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regulates IPRs, there are ongoing conceptual debates to what extent it is consistent with the CBD and other international bodies.

It has to be noted that clear causal linkages are rare and methodologies for assessing impacts of trade on biodiversity are relatively underdeveloped. The conservation community should improve these methodologies while ensuring that key lessons are transmitted to the appropriate policy making contexts.

An increasing number of Multilateral Environmental Agreements (MEAs) includes trade measures to achieve their objectives. The outcome of a legal dispute on the relationship between WTO and MEAs is unclear, and the WTO's Doha Agenda includes the clarification of some related issues.

The participation of conservation stakeholders in trade policy making at the WTO has been marginal. The challenge is to develop procedures allowing input in a way that contributes to effective decision-making without undermining the legitimate role of States. Better procedural rules are especially needed for the Dispute Settlement where NGOs have so far relied on ad hoc procedures for submissions.

Several other regional or bilateral integration agreements have created a complex patchwork of rules relating to trade and sustainable development. The conservation community should carry out comparative analyses of experiences in different regions, create feedback loops to global fora and in general be aware of regional developments.

In addition, the linkage between trade and biodiversity should be addressed by capacity building, communication and interaction between actors. This includes enabling conservation constituencies to interact with trade policymaking and providing national and international institutions with technical assistance. *BioRes*, a publication produced jointly from ICTSD and IUCN, provides bi-weekly information on the developments at the intersection of trade and biological resources. Together with the increase in dialogues and informal meetings, this has led to a more constructive interaction between trade and environment officials, although wide gaps still remain.

## List of Acronyms

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ABS	Access and Benefit Sharing
ACP	Group of African, Caribbean and Pacific States
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CTE	WTO Committee on Trade and Environment
DSB	WTO Dispute Settlement Body
EU	European Union
FAO	UN Food and Agriculture Organisation
GATS	WTO General Agreement on Trade in Services
GATT	WTO General Agreement on Tariffs and Trade
GMO	Genetically Modified Organism
ICTSD	International Centre for Trade and Sustainable Development
IISD	International Institute for Sustainable Development
IPRs	Intellectual Property Rights
IUCN	International Union for Conservation of Nature and Natural Resources – The World Conservation Union
JWPTE	OECD Joint Working Party on Trade and Environment
MEA	Multilateral Environmental Agreement
MERCOSUR	Mercado Común del Sur, Common Market in South America
NAFTA	North American Free Trade Agreement
NGO	Non-governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PPMs	(product- and non-product-related) Process and Production Methods
SPS	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	WTO Agreement on Technical Barriers to Trade
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNEP	UN Environment Programme
WCC	World Conservation Congress
WIPO	World Intellectual Property Organization
WTO	World Trade Organisation
WWF	World-Wide Fund for Nature

## I. Introduction

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The linkages between international trade and biodiversity conservation have been long recognized by the international community, when IUCN initiated what became the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in the 1960s. As the current IUCN Intersessional Programme notes:

*Today's pattern of economic development typically fails to value, or undervalues, natural resources. There are many perverse incentives that are at variance with conservation objectives. Trade and free market systems, which do not account for environmental services, waste nature's assets. Economic systems which destroy social and cultural diversity reduce our capacity to cope with the very changes globalisation brings. 0*

In addition, trade and uncontrolled globalisation can be key drivers of extinction and loss of ecosystem integrity.

Addressing these problems requires consideration of a range of issues, including the valuation of ecosystem services, governance to trade in biological resources at national and international levels, economic incentives, information on the nature and impact of wildlife trade and natural resource consumption on the equitable sharing of costs and benefits.

In light of the importance and complexity of these issues, the IUCN General Assembly/World Conservation Congress has produced several trade related resolutions. Resolution 2.33 of the Amman Congress on Trade liberalization and the environment was the third successive IUCN General Assembly/WCC Resolution on trade. Resolution 2.33 urges IUCN to:

- Investigate the environment consequences of trade liberalization and to widely disseminate results and recommend actions
- Elaborate on a models of dispute settlement and compliance for multilateral environmental agreements which would also address trade and environment conflicts
- Promote capacity building programs for developing countries so as to enable them to include environmental considerations in trade policies.

This paper seeks to address the first bullet point in Resolution 2.33. It will seek to outline the most important linkages between trade liberalisation and biodiversity, while drawing out lessons for the conservation community. It will then outline the governance challenges, means and mechanisms to address trade and biodiversity, and finally survey the institutional actors involved in the trade and biodiversity nexus.



## **II. Impacts of trade and investment liberalisation policies on biodiversity**

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This section will describe the impacts of general trade and investment liberalisation policies on biodiversity. In so doing, it will also set the stage for the discussion in the subsequent sections on specific instruments and mechanisms.

### **A. General Impacts**

International trade can have both negative and positive impacts on biodiversity. Generally speaking, negative impacts occur when the market structures are such that it is more profitable to exploit biodiversity for trade than it is to conserve it. Similarly, trade can be negative if substances that are harmful to biodiversity (e.g. dangerous chemicals) are permitted to be traded or if there are insufficient controls over invasive alien species in trade. In both these cases, the "externalities" (i.e. costs that are not borne by those directly involved in the transaction) have not been "internalised" into the price of the goods involved. Correcting this, from an economic policy standpoint, entails proper valuation of such goods, so that all the inherent costs – e.g. to third parties, future generations, society as a whole – are accounted for in the price. Typically, the instruments for achieving such cost internalisation are taxes, charges, quotas, and bans. In order for international trade to be supportive of such cost internalisation, a international system of rules and procedures is needed to effectively control markets, create the right incentives, and ensure that enhanced trade does not undermine environmental objectives, particularly, but not only, for environmental values that transcend national boundaries. This entails a strong multilateral governance process, anchored by effective institutions and meaningful commitments by national governments to coordinate and cooperate.

However, trade may also be positive if it provides incentives for sustainable use of biodiversity, or disincentives for unsustainable use. Increased market access for sustainably produced goods enhances the potential value of such goods. Often, additional instruments, e.g. certification, are required to differentiate these goods in the marketplace. Thus, the rules governing the international market must allow for such differentiation in order for instruments such as certification to work effectively. Mechanisms and procedures must also be in place to ensure that sufficient amounts of the increased revenues are channelled back to those closest to the biological resources, not only so as to provide equitable benefit sharing, but to ensure that the incentives for sustainability are as effective as possible.

#### **1. Trade in species**

The most direct interface between trade and biodiversity policy is trade in wild species or their derivatives. This involves several aspects. The first is ensuring that the international market supports incentives for conservation and sustainable use. In some cases, this means placing controls on the market. For example, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), provides a multilateral framework for trade in species listed in its Appendices. CITES reflects agreement that the international market in such species needs to be regulated and monitored in order not to further endanger species. But not all species that meet the listing criteria in CITES are actually listed (although the recent meetings of the CITES Conference of Parties have made important progress in listing commercially important species, e.g. in the fisheries area). Thus, both within CITES and beyond, the main challenge remains linking trade policy to better achievement of sustainable use, which involves creating market opportunities for products that are produced sustainably, and regulating trade where it threatens sustainability long before extinction is a prospect. Table II.1 provides an estimate of the value of international trade in wildlife, which gives an impression of the scale of resources that could be at least in part geared towards conservation and sustainable livelihoods.

**Table II.1: Estimate of the annual value of global international trade in wildlife in the early 1990s 0,0**

<b>Commodity</b>	<b>Estimated value in US\$</b>
<b>Live animals</b>	
Primates	10 000 000
Cage birds	60 000 000
Reptiles and amphibians	6 000 000
Ornamental fish	750 000 000
<b>Animal products for clothing/ornament etc.</b>	
Mammal furs and fur products	750 000 000
Reptile skins	200 000 000
Reptile skin products	750 000 000
Mollusc shells	200 000 000
Ornamental corals	20 000 000
Natural pearls and products	90 000 000
<b>Animal products for medicine</b>	
Wild ungulate products for medicine (deer velvet, musk etc.)	30 000 000
Chelonian products	5 000 000
Seahorses	5 000 000
<b>Animal products for food (excluding fish)</b>	
Game meat	120 000 000
Frogs legs	60 000 000
Swiftlet nests	65 000 000
Edible snails	460 000 000
<b>Live ornamental plants</b>	
"Wild" plant trade	250 000 000
<b>Non-wood forest products (NWFP)</b>	
Global NWFP estimate (Iqbal 1995)	11 108 700 000
<b>Subtotal</b> excl. fisheries food products & timber	14 939 700 000
Fisheries food products	40 000 000 000
Timber	104 000 000 000
<b>TOTAL</b>	158 939 700 000

While ensuring that trade in species is supportive of biodiversity is self-evident from the conservation standpoint, international trade law does not generally permit market discrimination based on process and production methods (PPMs), such as whether species are managed sustainably. Although there are exceptions to this (viz. GATT Article XX), disputes over the interpretation of these provisions are often settled by trade policy specialists who are not always informed by conservation policy. Nonetheless, it must be acknowledged that the recent WTO decisions in the Shrimp-Turtle cases<sup>1</sup> indicate that these exceptions allow some opening for enacting trade restrictions for environmental ends.

It should also be noted that multilateral agreements on the use of these measures are more likely to withstand a WTO challenge – given that the WTO has on several occasions expressed a preference for multilateral approaches to solving environmental problems – than unilateral ones. This is because advocates of trade liberalisation view unilateral trade measures with suspicion, since they allow powerful countries to bully smaller ones. Many environmentalists, especially from developed countries, argue that unilateral trade measures may be necessary where a multilateral consensus is not feasible or forthcoming. In contrast, conservationists from developing countries are generally more suspicious of unilateral trade measures than those in developed countries, although in some cases have also welcomed them. All WTO cases so far on environmental measures have involved unilateral action, although, as indicated, the most recent WTO cases appear to have opened the space available to develop trade related environmental measures under certain circumstances.

Thus, two objectives of the conservation community should be to contribute to:

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<sup>1</sup> See especially United States - Import Prohibition of Certain Shrimp and Shrimp Products. Recourse to Article 21.5 by Malaysia, Panel Ruling (WT/DS58/RW, 15 June 2001) and Appellate Body ruling (AB-2001-4, WT/DS58/AB/RW, 22 October 2001).

- Ensuring that effective multilateral measures are taken to control and influence the international marketplace so as to promote conservation of biodiversity and sustainable use of biological resources.
- Ensuring that similar unilateral measures promote conservation and sustainable use, where appropriate and accompanied by financial and technical assistance to developing countries.

## **2. Trade in goods harmful to biodiversity**

Another trade policy issue is the regulation of the movement of goods that harm or may harm biodiversity. Examples include genetically modified organisms (GMOs), alien invasive species, dangerous chemicals, and hazardous waste. Although trading rules allow States to restrict the import and export of these materials when it is clear that they cause harm, the difficult cases occur when States seek to take a precautionary approach when full scientific evidence of causation is lacking. The recent WTO Appellate Body decision in the *Asbestos* case is interesting in allowing States to restrict imports when a product is dangerous,<sup>2</sup> but in that case, sufficient scientific evidence was present.

The conservation community might seek to achieve the following objectives:

- Influence and support multilateral fora, such as WTO and Regional Integration Agreements, where trade-related measures relating to substances harmful to biodiversity (e.g. legitimacy of trade controls based on precautionary principle; sanitary and phytosanitary rules relating to invasive alien species or GMOs) are being developed.
- Raise awareness, influence and support countries and regions in developing trade-related measures to prevent and control the movement of substances harmful to biodiversity, while also seeking ways in which costs of such controls are equitably shared.
- Advocate to ensure that the development of international trade rules does not undermine effective and appropriate trade-related measures to prevent and control invasive alien species.

## **3. Enhanced Market Access for Environmental Goods and Services**

Another issue arising from the Doha Development Agenda is enhanced market access for "environmental goods and services", which implies special trade conditions for such products. However, there is considerable disagreement over what would be encompassed under this framework, i.e. what makes goods and services "environmental". It is one thing if the environmental aspect applies to the end use of the good or service; if it applies to the production process, it brings in the PPMs problematique referred to above. In either case, it would appear likely that some of these goods and services relate to biodiversity conservation and benefits arising from using biological resources. In the WTO, it has mainly been developed countries that have argued for an expansive definition of environmental goods and services. Recently, a few developing countries have also begun to perceive some advantages to their exports for an expansive definition. Consensus on this is, however, far from being realised.

Given this situation, the conservation community should seek to influence developments in the following respects:

- Contributing scientific expertise to the process of defining environmental goods and services relating to biodiversity
- Developing markets for environmental goods and services, e.g. through provision of information from sustainable producers.

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<sup>2</sup> European Communities - the Measures Affecting Asbestos and Asbestos-Containing Products (WT/DS135/AB/R, 12 March 2001).

#### **4. Investment liberalisation and protection**

Investment policy is profoundly important to biodiversity, as to other environmental sectors, and can be both negative and positive. This paper will not consider all, or even most, aspects of this policy area; rather, the paper is limited to investment liberalisation policy, which has been linked to trade policy, mainly for institutional reasons.

There is already a rudimentary agreement on trade-related investment measures in the WTO, but the proposals from the EU and Japan push for a more comprehensive set of rules to be developed. The Doha Development Agenda provided for a decision to be taken on whether to begin negotiations on investment liberalisation. Members declared in July 2004 that 'no work towards negotiations [...] will take place within the WTO during the Doha Round'. Nonetheless, investment liberalisation is very much alive in some regional contexts, e.g. NAFTA, EU-MERCOSUR, EU-ACP, and may return to the forefront of the WTO. The core issue for conservationists is the extent to which State can set conditions for investment relating to sustainability (e.g. as contemplated under the Clean Development Mechanism) or to subsequently regulate an industry where foreign direct investment occurs. A balancing of interests is called for. Experience under Chapter 11 (Investment) of the North American Free Trade Agreement (NAFTA) reveals that investment liberalisation can override some domestic regulation of the environment. Under Chapter 11 complaints, some environmental and health regulations have been considered as "expropriation" of investments and have led arbitrators requiring governments to compensate investors with very large sums.<sup>3</sup>

The conservation community should undertake the following:

- Monitor and assess the implications of the development of investment liberalisation in bilateral, regional and global fora
- Advocate to ensure that liberalisation of foreign direct investment does not hinder a country from taking effective action to conserve biodiversity
- Advocate to ensure that investment liberalisation does not interfere with the effective operation of investment mechanisms that support biodiversity, e.g. green or ethical investment.

#### **5. Trade in services**

Liberalisation of the services sector is an increasingly important subject of negotiation in the WTO. It falls under the framework of the General Agreement on Trade in Services (GATS), which foresees progressive liberalisation of the services sector on the basis of commitments made by individual Members. In many ways, services liberalisation is about investment in the services sector and thus raises similar sustainable development issues. The key issue for sustainable development is the extent to which GATS permits States to regulate their services once they have agreed to liberalize them, as some of these services will have impacts on biodiversity conservation, e.g. tourism, water, and waste disposal. The problems are complex, as services liberalisation may bring certain developmental and efficiency gains associated with privatization, but there may be inequitable adjustment costs that arise in the process. Thus, the extent to which regulation is still permitted, and of what aspects of the particular service, are particularly important. These issues remain open, and may be decided in WTO negotiations and possibly in future WTO dispute settlement cases.

The full extent to which trade liberalisation in services will impact on biodiversity is not yet clear. In this context the conservation community should:

- Monitor the discussions and negotiations on services liberalisation
- Work with other partners to develop assessment methodologies and enhance the information base regarding impacts of services liberalisation on biodiversity.
- Advise countries on the biodiversity implications of their commitments to liberalize services, especially on their ability to regulate in the liberalized sectors.

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<sup>3</sup> See, e.g. *Methanex Inc. v. United States*; *Pope & Talbot v. Canada*.

## **B. Specific trade-related measures and issues that can impact on biodiversity conservation**

Incentives to influence the market are increasingly important tools to achieve biodiversity conservation. Many of these have implications for trade policies globally and nationally.

### **1. Certification and Labelling**

Certification and labelling schemes based on environmental and social criteria are particularly prominent in the markets for forest, agriculture, and marine products, and are steadily becoming an important feature in other markets. For example, forest certification is rapidly expanding and the growth has been particularly strong during the last two years, although it is still a minority of total wood in trade. The certified area is estimated at 109 mio. ha (January 2002). This is almost four times higher than two years ago and twice the level a year ago. 0

**Table II.2: Forest certification schemes in operation 0**

<p><b>Global</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> FSC Forest Stewardship Council (30 national initiatives)</li></ul> <p><b>Regional</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> PEFC Pan European Forest Certification System in Europe (13 national schemes endorsed)</li><li><input type="checkbox"/> SFI Sustainable Forestry Initiative in North America</li></ul> <p><b>National</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> CSA Canadian Forest Certification Scheme</li><li><input type="checkbox"/> American Tree Farm System</li><li><input type="checkbox"/> Malaysian Timber Certification Council</li><li><input type="checkbox"/> LEI Lembaga Ecolabel – Indonesia</li><li><input type="checkbox"/> CERFLOR – Brazil</li><li><input type="checkbox"/> CertforChile – Chile</li></ul>
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Certification and labelling are not only relevant to enhancing the market potential for sustainable products, but are increasingly being considered as an instrument to control trade in illegally harvested products.

The WTO compatibility of these schemes is unclear. In particular, it is not certain whether the Agreement on Technical Barriers to Trade (TBT) or the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) permits such schemes (even if they are independent and voluntary) if their criteria are based on considerations not directly discernable in the properties of the end product (e.g. whether the wood comes from a sustainably managed forest). Although a WTO challenge has not yet been mounted, discussions in the Committee on Trade and Environment have revealed that many export dependent countries (particularly developing countries) are worried about the potential of these instruments to limit their access to foreign markets.

The conservation community should consider undertaking the following actions:

- Technical inputs into international processes aimed at strengthening the appropriate use of certification and labelling, including in MEAs, and in a fashion that takes account of costs to producers
- Convening stakeholders to resolve conflicts that arise over the use of specific certification and labelling schemes, e.g. conflicts between competing firms or between NGOs and some firms

- Advocating to ensure that the WTO does not interfere with the legitimate use of these instruments, e.g. by encouraging disputes to be settled outside the WTO or in seeking clarifications or amendments of trade rules.

## **2. Subsidies**

Another market instrument that impacts on biodiversity conservation is subsidies. Subsidies may help achieve sustainability, e.g. if they support conservation-related activities that otherwise would not be feasible. They may also be harmful to sustainability if they support activities harmful to biodiversity.

The WTO regulates certain subsidies, but not all, and only from a trade-policy perspective. The WTO Subsidies Agreement, which covers export and production subsidies, prohibits subsidies based on export performance, and allows Members to complain about other subsidies that impact adversely on them. These adverse effects are not related to sustainability; indeed sustainability does not figure at all as a factor in the Agreement. Initially, an exemption from the rules against using subsidies existed in the WTO Subsidies Agreement for certain environmental situations, but this exemption has now expired.

One of the issues now on the Doha Mandate concerns the elimination of subsidies in the fisheries sector. Although this might appear to be a case of win-win, as between trade liberalisation and conservation, putting this into practice will likely imply revising the WTO rules. Although some Members are in favour of eliminating fisheries subsidies, the negotiations to achieve this are expected to be long and difficult.

Another key area where subsidy policy is of central importance relates to agricultural liberalisation. Negotiations are proceeding under the mandate of the WTO Agreement on Agriculture, although disagreements over this were at the core of the collapse of the 2003 WTO Ministerial Conference in Cancun. There are several linkages between agricultural subsidies and biodiversity. Firstly, there is the difficult but important question of how agricultural subsidies affect biodiversity – both in the country where the subsidies are in place, and in countries where the subsidised goods are traded, and where land use changes occur as a result. A second issue is the extent to which domestic support not linked to production can and should be used for environmental objectives. Third, there is the question of what adjustment measures should be taken if subsidies are reduced or eliminated. All of these issues pose complex empirical and policy challenges, particularly as they are being dealt with in a global negotiating framework.

A further element of subsidy policy is the support provided by export credit agencies. Recently, the United States has led a process to agree on environmental criteria in the granting of export credits. The US has incorporated environmental impact assessments in their grant making procedures, but not all developed countries have done the same. The discussions in the OECD have so far not been effective in leveraging change in this direction. Those issues have not yet appeared in the WTO context.

The conservation policy community needs to:

- Focus attention on the national or regional level, in the first instance, since that is where subsidy policy originates
- Bring up key messages to the global level based on experiences at national and regional levels, for example on subsidies for fisheries and agriculture.

## **3. Public Procurement**

Governments, as the single largest consumer in the marketplace, can exert great influence via their public procurement policies. In recent years, some European governments have been initiating “green” procurement policies. A prominent example is the attempt for governments to limit their purchases of wood products to those from sustainably managed sources. An important linkage is made between procurement policy and certification schemes. Although public procurement policy is on the agenda at the WTO, these aspects do not seem very controversial at present. This is likely for two reasons: the WTO Public Procurement Agreement is plurilateral, with its membership so far limited to developed countries and it contains enough breadth for imposing environmental conditions to procurement

policy. Thus, public procurement issues have tended to be debated mainly at national or supranational (EU) level.

The conservation policy community should engage with governments to ensure support for biodiversity conservation in "greening" their procurement policies.

#### **4. Precautionary Approach**

The Precautionary Principle, or Precautionary Approach, is especially important in implementing the Convention on Biological Diversity (CBD) (e.g. in preventing and controlling alien invasive species) and the Biosafety Protocol. At the WTO, there has been one case, Meat Hormones,<sup>4</sup> which ruled on the precautionary principle in relation to the Agreement on Sanitary and Phytosanitary (SPS) Measures. In that case, the European Union had invoked the precautionary principle in defence of its risk assessment procedures that departed from the applicable standards agreed by Codex Alimentarius and which were specified in the SPS Agreement. The WTO Appellate Body ruled that although the precautionary principle might be reflected in the SPS Agreement, the precautionary principle could not modify the standards in the Agreement. Hence, the precautionary principle could not be used to justify the EU trade restrictions. The precautionary principle has also been the subject of debate in several WTO fora, such as the SPS Committee and the Committee on Trade and Environment (CTE). In the SPS Committee, there has been at least one instance where the EU has withdrawn a precautionary measure relating to pests after complaints were made by other Members that these measures were contrary to the SPS Agreement. In the CTE, the EU had introduced its Communication on the Precautionary Principle, which was met with criticism by developed and developing countries, who fear its use to justify trade restrictions.

The conservation policy community needs to consider the trade policy aspects of its ongoing work on the precautionary principle and its application to key issues, such as controlling the movement of alien invasive species. However, given the precautionary principle's vague formulation, contributions can be made to diminishing trade conflicts over its use by:

- Convening key stakeholders to resolve conflicts over the interpretation and application of the precautionary principle in specific contexts
- Promoting and guiding the implementation of the precautionary principle in multilateral contexts

#### **5. Intellectual Property Rights**

Intellectual Property Rights (IPRs) have become part of the trade policy agenda by virtue of their inclusion in the WTO, as a result of the Uruguay Round. As noted in the CBD, IPRs are important to the achievement of the Convention's objectives, and therefore, should be supportive. In the CBD, IPRs are commonly discussed in relation to access to genetic resources and benefit sharing (ABS), but it also arises in discussions on protecting traditional knowledge from misappropriation, as well as the general policy on agricultural biodiversity, such as genetically modified organisms (GMOs). Recently, there has been some momentum on the role of IPRs in ABS, through the adoption of the Bonn Guidelines and the FAO International Treaty on Plant Genetic Resources, as well as discussions in World Intellectual Property Organization (WIPO) and the WTO. However, several important matters remain to be resolved. At the general level, there are ongoing debates about the extent of the exceptions in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), and whether that Agreement ought to be amended so as to ensure consistency with the CBD. Related to these are unresolved questions of detail (e.g. whether the TRIPS Agreement permits requirements that patent applicants disclose the geographic origin of genetic resources used in the invention, as well as the prior informed consent of the source country). Furthermore, there remains a general challenge of implementing these rules in a manner that supports conservation ends.

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<sup>4</sup> EC Measures Concerning Meat and Meat Products (Hormones) - AB-1997-4 - Report of the Appellate Body (WT/DS26/AB/R and WT/DS48/AB/R)

To a great extent, much of the debate has been conceptual. The empirical evidence of the negative and positive linkages between IPRs and conservation has yet to be adduced, and is likely to vary considerably depending on the context.

The conservation community can contribute to ensuring that IPRs support conservation:

- Carrying out technical studies on the use of mechanisms (e.g. disclosure requirements) aimed at ensuring IPRs take account of biodiversity policy
- Convening stakeholders and actors to resolve conflicts over IPRs and conservation (e.g. conflicts between commercial firms and holders of traditional knowledge)
- Advocating to ensure that IPRs are not used to misappropriate traditional knowledge based on biodiversity

## **6. Assessing the impacts of trade liberalisation on biodiversity**

Clear causal linkages between all of the aforementioned issues and conservation are rare. As a result, there is increasing attention placed to assessing the impacts of trade agreements and policies on biodiversity and sustainable livelihoods. In particular, this is being promoted by the European Union (EU), the UN Environment Programme (UNEP), and WWF – World-Wide Fund for Nature. However, the methodologies for assessing impacts on biodiversity are still relatively underdeveloped. These methodologies involve assessing the economic, environmental and regulatory aspects of trade liberalisation agreements, which naturally vary with each country.

The conservation community should aim to:

- Improve the technical methodologies of assessing trade policies
- Ensure that the key lessons and messages are transmitted to the appropriate regional and global policy making contexts



### III. International governance of trade and biodiversity

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Many of the issues relating to trade and sustainable development are linked to defining the appropriate international governance of trade and biodiversity. Indeed, much of the underlying debate over trade and sustainable development concerns the role and power of the World Trade Organization (WTO) as an institution, although there are similar concerns with regional trade instruments and institutions, such as NAFTA. Initially, when the WTO was created in 1995, environment and development advocates were fearful that the WTO would be a very powerful institution that would set back many of their hard-won gains in developing economically based environmental measures. Although, to some extent, those fears have been allayed, it remains to be seen whether the WTO can positively support sustainability. This is particularly important given that the WTO mandate already reaches so deeply into the policy arena relating to sustainable development, and looks likely to continue doing so with the increasing "widening" of its agenda, e.g. so as to include IPRs, and possibly investment. At the same time, the international biodiversity agenda has always included trade matters, e.g. the use of mandatory and voluntary trade measures in CITES. This trend has steadily intensified – e.g. the focus on IPRs and incentive measures in the CBD.

Effective international governance of trade and biodiversity conservation entails clear and effective international rules and institutions, efficient division of labour between institutions, as well as between global regional and national levels, and an overall policy environment that stimulates and leverages States and non-State actors to increasingly pursue conservation of biodiversity. At present, however, the international governance of these issues is characterized by legal ambiguities, institutional overlap and lack of synergy, dissonance and lack of coordination between global, regional and national levels, and an overall policy climate that is rife with unhealthy political dynamics that hinder effective progress. Achieving effective global governance involves addressing the issues below.

#### 1. Relations between WTO and Multilateral Environmental Agreements (MEAs)

An increasing number of MEAs either set out trade measures (e.g. CITES, Basel Convention, Biosafety Protocol) or create frameworks (e.g. CBD) for developing future trade measures in order to achieve their environmental and developmental objectives. There has never been a formal legal dispute between States over the WTO/MEA relationship, only some serious threats to start one, but trade measures in MEAs still face the risk of being found WTO-incompatible, and this lack of legal clarity has, according to anecdotal evidence, a "chilling" effect on the further development and full implementation of such trade-related environmental measures. This effect is because of the popular perception that the WTO is a stronger international institution, with a weightier set of rules, than other institutions, including environmental ones; this is despite the legal reality that in many cases the WTO would not necessarily take precedence over conflicting rules in other treaties. Nonetheless, it is to be acknowledged that the WTO rules are indeed powerful because they are grounded by a comparably effective dispute settlement system. However, despite the potential for conflict, increasing attention is also being paid at finding operational synergies between some WTO rules and some MEAs.

**Table III.1: Selected MEAs with Specific and Non Specific Trade Measures**

#### **Specific Trade Measures**

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) - - restricts and regulates trade in listed species
- Montreal Protocol on Substances that Deplete the Ozone Layer – bans and controls trade in listed substances to support phase out schedules
- Basel Convention on the Transboundary Movement of Hazardous Wastes – sets up a regime for prior informed consent for wastes in trade and adds conditions to this trade
- Biosafety Protocol – sets up an advanced informed consent regime for certain living modified organisms.

- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade – controls and restricts trade in listed substances.

### **Non-Specific Trade Measures**

- Convention on Biological Diversity – e.g. trade related incentive measures; controls on trade to prevent invasive alien species; IPR-related measures
- CITES – allows Parties to take stricter domestic measures than those required under the treaty
- UN Framework Convention on Climate Change and Kyoto Protocol – e.g. border tax adjustments to support carbon taxes; investment controls for Clean Development Mechanism projects.

The interaction between the two bodies of law is very complex, and the particular extent of the potential incompatibilities depends on the state of the jurisprudence and the particular measure and MEA in question. Suffice it to say that the most difficult cases to resolve are ones where the trade measure is not "specific", in the sense of not being spelt out in the text of the treaty. Thus, while a WTO challenge to a listing of a species in Appendix I of CITES is not very likely, and would likely not succeed based on the present state of WTO jurisprudence, a challenge to an import ban that is a "stricter domestic measure" taken under CITES might indeed stand a better chance of success.

Largely as a result of demands by the European Union, the Doha Development Agenda includes an agenda item on the relationship between WTO rules and "specific" trade measures in MEAs. However, the mandate specifically states that the outcome will not prejudice the balance of rights and responsibilities of WTO members. Thus, it is doubtful that these negotiations will lead to much meaningful change in the way the WTO interacts with MEAs, since it appears to limit the possible legal outcomes. This is a step backwards from the original mandate of the CTE, which suggested the possibility of reforming the multilateral trading system – although consensus on any reform proposals was never reached. In any event, they are negotiations that will take place only within the framework of the WTO, and without (to date) the formal participation of MEA secretariats. This too detracts from the legitimacy of the exercise.

Ensuring that MEAs are an effective framework establishing trade measures for achieving biodiversity conservation should remain a high priority for the conservation community. In general, MEAs provide the best opportunities for countries to create the appropriate balancing between environmental and development objectives. Thus, the conservation policy community should provide:

- Advocacy aimed at the WTO in support of finding an appropriate accommodation between WTO and MEAs, as well as preventing negotiation or judicial outcomes in the WTO that undermine the effectiveness of MEAs
- Advocacy and technical inputs aimed at ensuring that appropriate and effective trade measures are adopted under MEAs, particularly in developing linkages between policy and practice
- Convening key actors and stakeholders to resolve trade-related conflicts in MEAs

## **2. Participation of conservation stakeholders in trade policymaking at the WTO**

An issue that has been on the agenda of the environmental community since the beginning of the WTO and before concerns the lack of transparency and public participation in trade policy making. Given practices in international policy making, such restrictiveness undermines the legitimacy of the WTO. There has been some recent progress in derestricting WTO documents, and increasingly, the WTO makes information available on the Internet. However, the WTO does not permit anywhere near the level of participation of affected stakeholders in its decision-making that is the norm in environmental processes. Only WTO Members are normally permitted to sit in the negotiating rooms. The exceptions are for approved international organizations in the Committees, e.g. the Committee on Trade and Environment (CTE) and for any accredited observer to the plenary session of a Ministerial Conference. For a list of accredited organisations see Table 0.2. In general, these two exceptional

cases are not fora where decision-making and real negotiations take place. However, it must also be noted that the issues of public participation and transparency are heavily politicised in the WTO. In general, developed countries, such as the US and EU Member States (through the European Commission), are pressing for greater public participation and transparency, whereas some developing countries are concerned, *inter alia*, that Northern NGOs and business lobbies with their considerable resources, might have more influence on the WTO agenda than they have. There is indeed a risk that greater opportunities for stakeholder participation will be to the detriment of certain, weaker, States. The challenge is to develop appropriate procedures that provide for stakeholders input in a manner that contributes to more effective decision-making, without undermining the legitimate role of States to exercise their sovereign entitlement to make international policy.

### 3. Dispute settlement

In several respects, the Dispute Settlement Body (DSB) of the WTO is the place where most of the rule development on trade and sustainable development has taken place. The WTO Dispute Settlement is a compulsory mechanism (i.e. can be triggered by only one party), and rulings lead to direct economic consequences. The most recent decisions by the DSB have been more favourable to environmental arguments (e.g. Shrimp Turtle, Asbestos). Key GATT/WTO Disputes relating to trade and biodiversity include:

- United States - Prohibition of Imports of Tuna and Tuna Products From Canada (1982)
- Canada - Measures Affecting Exports of Unprocessed Herring and Salmon (1988)
- United States - Restrictions on Imports of Tuna (not adopted, 1991 and 1994)
- United States - Taxes on Automobiles (not adopted, 1994)
- United States - Standards for Reformulated and Conventional Gasoline (1996)
- European Communities - Measures Affecting Meat and Meat Products (1998)
- United States - Import Prohibition of Certain Shrimp and Shrimp Products (1998)
- Australia - Measures Affecting Importation of Salmon (1998)
- Japan - Measures Affecting Agricultural Products (1998)
- United States -- Import Prohibition of Certain Shrimp and Shrimp Products - Recourse to Article 21.5 by Malaysia (2001)

While there are no formal procedural rules expressly governing direct public participation, NGOs have relied on *ad hoc* procedures developed through rulings and practices upheld by the Appellate Body in order to submit *amicus briefs*<sup>5</sup> (brief filed with the court by someone who is not a party to the case). Therefore, to promote public input in dispute settlements, formal *amicus* procedures should be adopted to authorize NGOs to submit *amicus* briefs in panel and appellate proceedings, *i.e.*, the procedural rules should be revised to include the formalisation of *amicus* procedures.

In addition, several important interpretative issues relevant to conservation remain open, or may further evolve. For example, it is unclear how the DSB will react to a complaint against a MEA measure by a non-party to that MEA. Another key issue relates to how and when outside expertise is used. Even further, one can argue that alternative, more conciliatory and participatory, approaches are more appropriate to address conflicts between trade and sustainable development than adjudicative approach ones. In the sphere of public policy, legitimacy is normally given to public policy that has been arrived at through public processes of consultation and participation and fair decision-making.

The conservation policy community can influence how disputes relating to trade and biodiversity are resolved by:

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<sup>5</sup> Latin term meaning "friend of the court". The name for a brief filed with the court by someone who is not a party to the case.

- Establishing itself as a resource to be called upon by WTO Panels when biodiversity expertise is required.
- Submitting *amicus curiae* briefs in appropriate disputes,
- Investigating and promoting innovative means to resolve trade disputes involving biodiversity, e.g. drawing on lessons learnt in other international fora or from the general field of alternative dispute resolution.

#### **4. Regional Integration Agreements and Bilateral/Inter-Regional Agreements**

While it might have been initially anticipated that the WTO would determine the rules relating to the trading system, which would then be implemented nationally or through regional or bilateral trading arrangements, this has turned out not to be the case. Several regional integration arrangements have gone further, or departed from, WTO norms, which creates an ever more complex patchwork of rules and relationships, including relating to sustainable development. Not all these developments are taking place within formal regional integration arrangements (e.g. Free Trade Agreement of the Americas), but can also be seen in the growing number of inter-regional agreements (e.g. EU-MERCOSUR), as well as bilateral trading arrangements (e.g. United States-Vietnam). At present, the growing web of norms and procedures makes for ever more complex policy making, with the implications for conservation policy not always clear. Some of these organisations and processes are presented in section VI.B.

The conservation policy community can contribute to ensuring effective regional and bilateral/inter-regional policy on trade and biodiversity by:

- Carrying out comparative analyses of relevant experiences and best practices in different regions
- Creating feedback loops between global (e.g. WTO, MEAs) and regional levels by providing information and analysis of relevant rules, policies and actions.
- Raising awareness and exchanging experiences

## **IV. Regional case studies**

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### **A. Trade and Biodiversity in South Asia**

Increased international trade is having a negative impact on the environment and natural resources in Asia, particularly in developing countries in the Asia region. Asia is home to some 60% of the world's population, and represents roughly one-third of the world's economic output. Still, in many places people are crowded onto relatively small areas of riverine lowlands, creating some of the most densely populated rural areas in the world.

Asia is facing a multitude of complex conservation challenges. It is a region of great diversity in geography, climate, biodiversity, and culture. Altitudes within the region vary from the world's highest mountains to equatorial lowlands. Several of the world's greatest rivers, such as the Indus, Ganges, Brahmaputra and the Mekong drain the watersheds of the region. A large array of archipelagos and islands are also found within the region. Climate varies according to elevation, latitude, monsoonal air movements and distance from oceans and seas, supporting ecosystems as diverse as the equatorial lowland rainforests of the Southeast to the deserts and alpine tundra in Northern South Asia.

The topographic, climatic, and other factors give rise to exceptionally rich biological diversity, with many species and ecosystems of global importance. There are seventeen nations in the world, which are classified as “mega-diversity” countries and contain over two-thirds of the Earth’s biological resources. In terms of plant and animal species at risk, these countries may account for 80 percent of the most endangered biodiversity of the Planet. Of the seventeen mega-diverse countries, three are members of ASEAN (Association of Southeast Asian Nations), namely Indonesia, Malaysia, and Philippines.

#### **1. Trade in Wildlife, Fisheries and Forest Products**

Attempts to describe international trade in wildlife must begin with the admission that there is inaccuracy and a great deal of speculation in assessing the real nature and extent of this trade. The trade is poorly documented in terms of species or products being traded and trade volumes and values involved. The two main sources of data on international trade in wildlife are data compiled by customs authorities and annual reports compiled by Parties to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

The role of international trade in the fisheries sector became increasingly significant when world marine fisheries production rose from 20 million tonnes in 1950 to over 120 million tonnes in 1997. In 1996, some 40 percent of the total world production of fish and fish products – worth over \$52 billion - entered international trade and the percentage continues to increase steadily. The introduction of modern fishing methods and technologies has completely transformed the fisheries industry in Asia. However, the increased mechanisation and destructive techniques of fishing, pose a serious concern and threat to the marine biodiversity of the region. Pressure on Asia’s fisheries will continue to increase, as long as consumption and trade continues to expand.

About 30 percent of the world’s land area is covered by forest, with Asia occupying over 15 million sq. km, which is nearly a quarter of the world’s total. Unfortunately, 72 percent of Asia’s original forest has been lost and only one-fifth of what remains can be classified as frontier forest. The rapid growth in the population and economy of the world is placing immense pressure on the timber forest products. A large segment of Asia’s rapidly growing population depends on forests for its housing, fuel wood and fodder needs, which has contributed to deterioration of forests. Remaining forests in Asia, which are important for their rich biological diversity and their economic value in terms of timber and non-forest products, are under pressure from the rapid growth of the population and the economy.

## **2. Subsidies**

Subsidies in Asia play a very important role in determining the extent of natural resource extraction. Asian governments play a very significant role in determining the costs borne by companies which extract and harvest natural resources. Asian governments tend to subsidise natural resources at levels which encourage unsustainable use. Usually, natural resources in Asia are priced at less than the marginal cost of their production to society. They are subsidised directly by Asian government budgetary and tax measures, indirectly by trade and other policy instruments that alter price signals and implicitly by allowing producers not to internalise the costs of externalities associated with the production process or to include in the price the opportunity cost of immediate consumption.

Export restrictions in Asia are also used to lower the price of natural resources domestically, in order to subsidise Asian companies using the resource as input for processed goods for export. This method of subsidy in Asia has affected the production and use of timber, fish, among other natural resources.

By reducing the price of a natural resource below the marginal cost to society, subsidies have far-reaching impacts on both investment and consumption patterns in Asia, which in turn accelerate environmental degradation.

## **B. Trade and Biodiversity in Latin America**

After facing massive economic problems in the 1980s, most Latin American countries started implementing free trade policies. Several negotiations to unite the economies of the Americas have since then been started, giving rise to the creation of the North American Free Trade Agreement (NAFTA) in 1994 and the Central American Free Trade Agreement (CAFTA) in 2004. Negotiations for a Free Trade Area of the Americas (FTAA) are scheduled to complete by 2005, but substantial disagreements between the parties remain.

The institutional changes following the agreements can help to fund and strengthen the weak Latin American institutional capacities and be used to harness trade to work for conservation in the region. Under the NAFTA side agreement on Environmental Cooperation (NAAEC), the Commission for Environmental Cooperation (CEC) is mandated to “address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law”. The CEC helps to assess the biodiversity implications of trade flows and build capacity in the participating countries. On the downside, the agreements might endanger environmental standards. NAFTA's controversial Chapter 11 can be used by private companies to claim compensation for costs of environmental and health regulation.

Latin America is ecologically very rich. However, its marine and terrestrial ecosystems face threats because of unsustainable harvesting practices and destructive land-use patterns. Nature resource-based products still dominate the export profile of most countries. Research indicates that trade liberalisation so far lead to increased extraction of resources and more intensive production methods instead of diversifying the range of export products. Though a gradual shift towards cleaner industrial production can be noted, pollution continues mostly due to insufficient environmental protection capacities. However, the impacts of trade liberalisation largely depend on which areas of the economies expand or contract and by how much. In general, trade revenues can provide essential resources to alleviate poverty and conserve nature. The specific implications of past and future trade liberalisation policies on biodiversity in Latin America need to be further studied and analysed to develop means to ensure that trade is supportive of biodiversity conservation in the region.

## **V. Means and mechanisms for addressing trade and biodiversity**

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Several means and mechanisms have emerged as important tools in addressing the linkages between trade and biodiversity.

### **1. Capacity Building**

Capacity building for developing countries is increasingly recognized as vital in relation to trade policy in general, as well as in addressing the interlinkages between trade and sustainable development. Firstly, it has become apparent that the implementation of existing trade rules severely tests the capacity of many developing countries, even with the various exceptions and phasing in periods present in some WTO Agreements. Thus, an important element of the Doha Development Agenda is capacity building, with a fund being established to enable the WTO to carry this out. In addition, the Advisory Center on WTO Law has been established to provide legal advice and representation to developing countries. Capacity building focused on trade and sustainable development is being carried out by several institutions (UN Environment Programme (UNEP), UN Conference on Trade and Development (UNCTAD), International Institute for Sustainable Development (IISD)), and others, but relatively little is aimed at assisting national biodiversity institutions and processes to address relevant trade issues.

The conservation policy community can consider exploring partnerships with the institutions listed above active in capacity building. In particular, the conservation policy community can make effective use of its knowledge of biodiversity and trade policy to:

- Build up the capacity of conservation constituencies to interact in relevant trade policymaking
- Provide technical advice and assistance to national and international institutions seeking to harness trade policy to support conservation ends

### **2. Communications and outreach**

An increasing amount of communications and information instruments have been developed in recent years. The International Centre on Trade and Sustainable Development (ICTSD) has made a tremendous contribution to raising awareness about the WTO through its weekly and monthly Bridges publications, as well as the newly launched BioRes (in collaboration with IUCN), which contain up-to-date information and analysis of developments in the WTO and other relevant fora. These publications are also produced in French and Spanish, so that they have considerable penetration in the developing world. The WTO internet presence has also improved dramatically, such that not only are most official documents made available in a timely manner, but also there are also various guidance documents to introduce the lay-reader (albeit to the issues from the WTO perspective). In addition, many NGOs, experts, and governments have added to the growing wealth of easily available electronic information on trade and sustainable development, from many perspectives.

### **3. Enhancing interaction between disparate actors**

Another important phenomenon has been the increase in dialogues and informal meetings around specific issues. In the early 1990s, the so-called Talloires process, convened by the Consensus Building Institute, contributed to the development of the 1996 CTE Report, which is the most important product of the CTE so far. Since then, ICTSD, as well as others, regularly convene informal meetings on topics of interest. One result of all this is that the interaction between trade and environment officials has become more constructive than previously, although wide gaps still remain on virtually every issue on the agenda.

## **VI. Institutional actors involved in trade and sustainable development**

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The actors who work on trade and sustainable development fall into four main categories:

### **A. Global intergovernmental organizations**

There are several global intergovernmental organizations that are active on trade and environment. IUCN already has working relations with some of these organisations; although in other cases the relationships could usefully be established or deepened.

However, IUCN must be careful in taking its decisions on how to engage with intergovernmental organizations, particularly trade organizations. Although the overall "atmosphere" surrounding trade and environment issues have become less polarised than in the early 1990s, it is still very politicised. And indeed, the agendas of some of these organizations might not be fully compatible with the goals of biodiversity conservation and equity. IUCN must be aware of the political risks of being too closely linked with any organisation. Put more positively, IUCN's strength and influence will derive from maintaining its independence, while engaging selectively where opportunities to influence arise. Thus, relations with trade organizations can bring benefits if they are focussed, limited, and the objectives well defined.

#### **1. World Trade Organization (WTO)**

The WTO is addressing sustainable development in the following bodies: the Doha negotiations, the Committee on Trade and Environment, the TRIPS Council, the Technical Barriers to Trade (TBT) Committee, the SPS Committee, and the Committee on Trade and Development. As alluded above, the Doha Development Agenda contains provisions on the environment, including MEAs, market access for environmental goods and services, fisheries subsidies, ecolabelling, and the relationship between TRIPS and the CBD. Given that the DDA negotiations involve mainly trade officials, and there is no formal interaction with other international organizations (with the exception of the CTE), it is far from certain that these negotiations will lead to sustainable solutions.

The discussions in the CTE appear to have moved away from strong advocacy and negotiation, which characterised the first years of its existence, to focus more on information exchange, and leveraging discussions aimed at further analysis. This more pragmatic approach is perhaps a reaction to the highly politicised atmosphere of the CTE's early years, although virtually all the major controversies remain open. It does not appear likely that the CTE will, in the foreseeable future, be a body which will be able to forge consensus on major issues. The CTE is to play a special role the DDA negotiations by providing an environmental input, but it is unclear how effective this will be, especially since in many cases the same officials will be involved in both processes. Notwithstanding the CTE's weaknesses, it remains an important body to monitor, at the very least to observe substantive trends and negotiation dynamics.

The discussions in the TBT and SPS Committees appear to be focused on resolving specific problems and cases, rather than addressing major policy issues. The reactions to the EC Communication on the Precautionary Principle revealed that deep political divisions remain within those bodies. One important development, however, is that the TBT Agreement was amended by adding a new Annex, which clarifies the process by which international standards can be created for purposes of recognition by TBT Agreement. It remains to be seen whether this prospect can or should be accessed by non-governmental initiatives, such as certification bodies.

The Committee on Trade and Development has so far not proven to be a very influential body, although it is supposed to play an oversight role in the DDA negotiations.

The WTO Dispute Settlement Body (DSB) is very important in interpreting WTO rules relating to trade and sustainable development, particularly given the activism of the Appellate Body. The practice of the DSB has made it clear that potentially two entry points are available to environmental bodies.



The first is, as mentioned above, the possibility to submit *amicus curiae* briefs, and the second is to provide scientific expertise, when called on by a Panel.

In addition to servicing meetings of Members, the WTO Secretariat carries out useful technical analyses, albeit from the WTO perspective. The Secretariat also carries out training and capacity building for developing countries on WTO law. The Secretariat has proven responsive to establishing links with other bodies and experts, most of them informal. Members of the Secretariat frequently observe international environmental negotiations, thereby interacting with environmental processes. There are also working relationships with UNEP, and ad hoc interactions with other organizations, such as ICTSD and IISD. Recently, an *ad hoc* expert group was created, of which one appointed member was from the environmental constituency. However, it now appears that this expert group will be disbanded.

□ [www.wto.org](http://www.wto.org)

## **2. UN Environment Programme (UNEP)**

UNEP's Economics and Trade Unit, based in Geneva focuses on four main trade themes: (a) MEAs and WTO, where sessions for environmental officials are convened immediately prior to CTE meetings (b) capacity building in collaboration with UNCTAD, (c) environmental assessments of trade agreements, and (d) fisheries subsidies. This work is a combination of convening stakeholders, analysis, and support for capacity building, and appears to be aimed at implementation and other matters of detail, rather than pushing for major policy change or rule making. With these activities, UNEP occupies a central presence in trade and sustainable discussions, although the actual effectiveness of this work remains to be seen.

□ [www.unep.ch/etu/etp](http://www.unep.ch/etu/etp)

## **3. UN Conference on Trade and Development (UNCTAD)**

UNCTAD engages in several activities relating to trade policy, several of which relate to the environment. It has a programme on trade, environment, and development in which several projects take place, including capacity building, technology transfer, traditional knowledge, and assessment of the impacts of environmental regulations on small and medium enterprises in developing countries. There is also a Biotrade initiative, which seeks to promote the sustainable trade in biological resources, as well as a programme on dispute settlement in international trade, investment and intellectual property that provides services for developing countries. By virtue of its nature, UNCTAD addresses the trade and sustainable development interface from a developing country perspective, and in a manner aimed at supporting developing countries. Accordingly, it will not provide a forum for overall consensus building, but is useful for its technical analyses and for convening like-minded officials and experts.

□ [www.unctad.org/trade](http://www.unctad.org/trade)

## **4. UN Food and Agriculture Organization (FAO)**

Although the FAO does not interact significantly with the WTO; trade is addressed mainly in the sectoral programmes of the FAO, such as those relating to agriculture, fisheries and forests, which operate at global and regional levels. Much of this work is technically oriented, although some policy issues are also addressed, such as subsidies and certification. The new FAO International Treaty on Plant Genetic Resources for Food and Agriculture strengthens FAO's importance on intellectual property issues. In addition, the Development Law Unit has carried out technical studies on some trade related aspects of natural resources, such as on plant variety protection. Accordingly, the FAO is important as an institution that provides targeted technical inputs and can convene stakeholders to address trade issues in very specific contexts.

□ [www.fao.org/trade](http://www.fao.org/trade)

## 5. Convention on Biological Diversity (CBD)

The CBD does not contain the term "trade" in its text, but several of its requirements have implications for trade policy. These are: (a) Access and Benefit Sharing (ABS), which directly impacts on IPRs, (b) invasive species, which bring in controversies over trade restrictions based, *inter alia*, on the Precautionary Principle, (c) agricultural biodiversity, which has called for an assessment of the economic impacts on agricultural biodiversity, (d) incentive measures, and (e) forest biodiversity, which contains some trade-related aspects.

In addition, the Biosafety Protocol is mainly about trade measures and its further development and implementation will lead to interaction with various WTO rules.

Thus, the CBD has the potential to become one of the central international processes where trade policy relating to biodiversity conservation is agreed, if there is sufficient political momentum for it to take the initiative.

The CBD has sought observer status in the TRIPS Council, but so far this has not been granted.

□ [www.biodiv.org](http://www.biodiv.org)

## 6. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

As noted above, CITES is at the forefront of the trade and environment interface. So far, however, it has not specifically engaged on WTO issues, other than making submissions at the CTE's MEA information sessions. A proposed Resolution which would have addressed some of the WTO-related concerns about the use of stricter domestic measures was not adopted at the recent meeting of the Conference of Parties. So far, the use of trade restrictions arising out of species listings, or as a result of non-compliance, has not been challenged at the WTO.

□ [www.CITES.org](http://www.CITES.org)

## 7. Organization for Economic Cooperation and Development (OECD)

The OECD has had a Joint Working Party on Trade and Environment (JWPTE) since 1991, which is serviced by both the Trade and the Environment Directorates. The JWPTE has presented a number of reports to Ministers, including in 1993 the Procedural Guidelines on Integrating Trade and Environment Policies and in 1995 and 1999 reports summarising the collective point of view of the OECD trade and environment policy-makers. The JWPTE meets regularly twice a year and sponsors certain events, such as consultations with NGOs and workshops.

At present the relevant work of the Environment Directorate is focussed on the following themes: export credit agencies and environment, investment and environment, and trade and environment. The Trade Directorate is dealing with the following themes: Methodologies for Environmental Assessment; Sustainable Product Policies and Trade; Environmental Effects of Trade; Trade Measures in MEAs; and Transparency and Consultation.

□ OECD Environment Directorate - [www.oecd.org/env](http://www.oecd.org/env)  
OECD Trade Directorate - [www.oecd.org/ech](http://www.oecd.org/ech)

## B. Regional intergovernmental organizations, regional trade processes and specialised agreements/processes.

In many cases, regional trade processes are at least as significant as global ones in creating rules and mechanisms relevant to trade and biodiversity. There has been a surge of regional trade agreements: More than half of the 162 agreements in force 2002 came into existence after 1995. There is a large diversity in the effectiveness and depth of these processes which are complemented by bilateral and inter-regional activities, i.e. EU-MERCOSUR. Furthermore, specialised international agreements and processes, such as the International Tropical Timber Agreement, may also be relevant to IUCN's work. The most important trade related regional agreements are presented below.

Priorities for the conservation policy community include working with regional institutions to:

- Influence global policy
- Analyse the specific interface between regional trade rules and conservation
- Contribute to fact finding and analyses of the impacts regional trade rules have on natural resources sectors

## 1. African Union (AU)

The **African Union** was established in 1999 to accelerate the regional integration while addressing the multiple social, economic and political problems Africa faces. It covers all African States except Morocco. Some of the seven Regional Economic Communities (including SADC, COMESA, ECOWAS) form intraregional free trade zones.

- [www.africa-union.org](http://www.africa-union.org)

## 2. Americas: NAFTA, FTAA and MERCOSUR

The **North American Free Trade Agreement** (NAFTA) is the world's largest free trade area, comprising Canada, Mexico and the United States. It was set up in 1994. Designed to foster increased trade and investment among the partners, NAFTA contains far-reaching protection for foreign investors (see for example 0). The establishment of NAFTA has been linked to shifts in production patterns, an increase in transportation and substantial environmental impacts.

- [www.nafta-sec-alena.org](http://www.nafta-sec-alena.org)

The **Free Trade Area of the Americas** (FTAA) is a free trade agreement being negotiated to cover 34 states in the Americas. It is scheduled to enter into force by the end of 2005.

- [www.ftaa-alca.org](http://www.ftaa-alca.org)

The **Mercado Común del Cono Sur** (MERCOSUR) was created by Argentina, Brazil, Paraguay and Uruguay in 1991 with the signing of the Treaty of Asuncion. It was set up to create a common market between the participating countries. In 1996 it was supplemented with political consultation mechanisms including Bolivia and Chile. Several regional political leaders put MERCOSUR on top of their political agenda in 2003, adding a Committee of Permanent Representatives and a Dispute Settlement Court.

- <http://www.mercosur.org.uy>

## 3. Asia: APEC and ASEAN

The **Asia-Pacific Economic Cooperation** (APEC) was established in 1989 in response to the growing interdependence among Asia-Pacific economies (including the US, Australia and Russia) and has since become the primary regional vehicle for promoting open trade and economic cooperation. APEC's 21 members have a combined Gross Domestic Product of over US\$16 trillion in 1998 and 42 percent of global trade.

Some APEC members were responsible for the Accelerated Tariff Liberalisation (ATL) initiative through the WTO, proposing tariff cuts for eight industrial sectors including forest products.

- [www.apecsec.org.sg](http://www.apecsec.org.sg)

The **Association of Southeast Asian Nations** (ASEAN) was established in 1967 in order to accelerate economic growth, social progress and cultural development in the region and to promote regional peace and stability. Its 10 members have a population of about 500 million, a combined gross domestic product of US\$737 billion, and a total trade of US\$ 720 billion. In 1992, it launched AFTA, the Asian Free Trade Area, which significantly increased the intraregional trade. The Agreement on Transboundary Haze Pollution was the first ASEAN environmental agreement to enter into force in 2003.

- [www.aseansec.org](http://www.aseansec.org)

## 4. European Union (EU)

The European Union is a free trade zone with common custom tariffs for third countries. It has a dominant position in world trade and is a significant importer and exporter of agricultural and manufactured goods as well as services. The free market was established in 1993 and covers all 25 member states.

The EU has the competence to develop a common trade policy for its member states. The Directorate General Trade represents them in bilateral and multilateral negotiations. The EU also covers a region with relatively strong environmental legislation and is a major force behind international environmental developments.

- [europa.eu.int/comm/trade](http://europa.eu.int/comm/trade)

## C. National governments

National governments are key actors in trade and biodiversity, not only because they collectively develop global policy, but also then implement it. In principle, many trade and environment conflicts would be resolvable if national governments projected coherent messages in the various international fora they participate in. However, the reality is often much more complex, in both developed and developing countries, often fail to overcome bureaucratic rivalries and other obstacles to achieving full policy coherence. In many cases, the environmental ministries or agencies are relatively weaker in influencing national policy than economic or trade ministries.

There are four possible tracks by which the conservation policy community could relate to national governments on trade and biodiversity. One is to work with select national governments in advancing key items on the global agenda.

A second track is to work with several governments with a view to developing common positions or lessening important differences. A third track is to work with national governments in helping to achieve appropriate balances between trade and biodiversity policies in both projecting messages to regional or global fora, as well as in implementing global law and policy on trade and sustainable development. This involves both technical assistance, as well as capacity building. As mentioned in previous sections of this paper, such cooperation can involve:

- Empowering ministries of environment, through providing information and opportunities for them to engage in relevant trade policy making
- Convening national stakeholders
- Providing trade and/or biodiversity inputs into processes driven by governments
- Advising on public procurement policies

A fourth track is to work with national government when they design their national trade policies, so that they are supportive of national biodiversity conservation objectives.

## VII. Summary of Recommendations

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This background document outlines the most important linkages between trade liberalisation and biodiversity, while drawing out lessons and recommendations for the conservation policy community. Trade policy changes the regulatory framework surrounding biodiversity and can increase the pressure on ecosystems. While trade in itself is neither good nor bad for biodiversity, it must be a priority to harness global trade flows to work for instead of against biodiversity conservation. Following is a synopsis of some of the recommendations emanating from this document:

### A. Strengthen environmental policies

International environmental regimes are often perceived as relatively weak in comparison to the trade regime and only cover parts of the environmental agenda. It is essential that effective multilateral measures are taken to control and influence the international marketplace so as to promote conservation of biodiversity and sustainable use of biological resources.

To tackle the global environmental crisis and fight poverty, the conservation community should work to ensure effective multilateral measures to control the international marketplace and promote biodiversity and its sustainable use. Multilateral rules are also needed to regulate trade in substances harmful to biodiversity and support countries controlling the movement of those substances. The costs of trade-related measures should be shared equitably.

The conservation community should help to strengthen certification and labelling schemes while bearing in mind the costs to producers and the danger of creating counter effective non-tariff barriers.

### B. Improve understanding of the link between trade and biodiversity

A great deal of uncertainty exists on the actual extent and gravity of the risks trade poses for biodiversity. The conservation community should thus help to monitor and assess the implications of trade, investment and services liberalisation and advise countries on biodiversity implications of their commitments.

It can also help to clarify the discussion on Intellectual Property Rights and Biodiversity by providing studies on mechanisms, convening stakeholders and actors and promoting that IPRs are not used to misappropriate biodiversity based Traditional Knowledge.

Lastly, there is a considerable need to contribute scientific expertise to help defining “environmental goods and services” and to develop markets for sustainably produced goods and services.

### C. Voice conservation concerns in trade forums

Conservation concerns are hardly existent in trade forums. To start integrating trade and biodiversity, the conservation community needs to get involved in trade, presenting its analysis and recommendations in policy formulation and implementation. It can establish itself as a resource to be called upon during dispute settlement and submit *amicus briefs* where appropriate. Further lessons can be learnt from other international fora and alternative dispute resolution. This can include convening stakeholders on conflicts arising, clarifying the relationship between WTO and MEAs and ensuring that international trade rules do not prevent action to conserve biodiversity.

The conservation community also needs to consider the trade policy aspects of its work on the precautionary principle, convene stakeholders to resolve conflicts and promote the use of the principle in multilateral contexts. It should specifically promote that international trade rules do not undermine the control of invasive alien species.

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## Annexes

**Table 0.1: Estimated annual costs in millions of dollars associated with some non-indigenous species introduction in the United States. [7]**

Category	Non-Indigenous Species	Losses and Damages	Control Costs	Total
<b>PLANTS</b>	<b>25,000</b>			
Purple loosestrife		---	---	45
Aquatic weeds		10	100	110
Mealeuca tree		N/A	3-6	3
Crop weeds		24,000	3,000	27,000
Weeds in pastures		1,000	5,000	6,000
Weeds in lawns, gardens, golf courses		N/A	1,500	1,500
<b>MAMMALS</b>	<b>20</b>			
Wild horses and burros		5	N/A	5
Feral Pigs		800	0.5	800.5
Mongoose		50	N/A	50
Rats		19,000	N/A	19,000
Cats		14,000	N/A	14,000
Dogs		250	N/A	250
<b>BIRDS</b>	<b>97</b>			
Pigeons		1,100	N/A	1,100
Starlings		800	N/A	800
<b>REPTILES &amp; AMPHIBIANS</b>	<b>53</b>			
Brown tree snake		1	4.5	5.5
<b>FISH</b>	<b>138</b>	<b>1,000</b>	<b>N/A</b>	<b>1,000</b>
<b>ARTHROPODS</b>	<b>4,500</b>			
Imported fire ant		600	400	1,000
Formosan termite		1,000	N/A	1,000
Green crab		44	N/A	44
Gypsy moth		N/A	11	11
Crop pests		13,000	500	13,500
Pests in lawns, gardens, golf courses		N/A	1,500	1,500
Forest pests		2,100	N/A	2,100
<b>MOLLUSKS</b>	<b>88</b>			
Zebra mussel		---	---	5,000
Asian clam		1,000	N/A	1,000
Shipworm		205	N/A	205
<b>MICROBES</b>	<b>20,000</b>			
Crop plant pathogens		21,000	500	21,500
Plant pathogens in lawns, gardens, golf courses		N/A	2,000	2,000
Forest plant pathogens		2,100	N/A	2,100
Dutch elm disease		N/A	100	100
<b>LIVESTOCK DISEASES</b>		<b>9,000</b>	<b>N/A</b>	<b>9,000</b>
<b>HUMAN DISEASES</b>		<b>N/A</b>	<b>6,500</b>	<b>6,500</b>
<b>TOTAL</b>				<b>138,229</b>



**Table 0.2: State of Accreditation of Observers in several WTO Forums**

**Accredited Observers to the WTO Committee on Trade and Environment**

African, Caribbean and Pacific Group of States (ACP Group); Convention on Biological Diversity (CBD); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); European Free Trade Association (EFTA); Food and Agriculture Organization (FAO); International Commission for the Conservation of Atlantic Tunas (ICCAT); International Monetary Fund (IMF); International Organization for Standardization (ISO); International Plant Genetic Resources Institute (IPGRI); International Trade Centre (ITC); Islamic Development Bank (IDB)<sup>6</sup>; Latin American Economic System (SELA); Organization for Economic Cooperation and Development (OECD); South Pacific Forum (SPF); Southeast Asian Fisheries Development Center (SEAFDEC)<sup>1</sup>; United Nations (UN); United Nations Commission for Sustainable Development (CSD); United Nations Conference on Trade and Development (UNCTAD); United Nations Development Programme (UNDP); United Nations Environmental Programme (UNEP); United Nations Framework Convention on Climate Change (UNFCCC); United Nations Industrial Development Organization (UNIDO); World Bank; World Customs Organization (WCO); World Intellectual Property Organization (WIPO)

**Observer Status for CTE pending**

Cooperation Council for the Arab States of the Gulf (GCC); Gulf Organization for Industrial Consulting (GOIC); International Tropical Timber Organization (ITTO); League of Arab States; Organization of the Islamic Conference (OIC); Organization of the Petroleum Exporting Countries (OPEC); Ozone Secretariat of the Montreal Protocol on Substances that Deplete the Ozone Layer; World Health Organization (WHO)

**Accredited Observers to the WTO General Council<sup>7</sup>**

Food and Agriculture Organization (FAO); International Monetary Fund (IMF); International Trade Centre (ITC); Organization for Economic Cooperation and Development (OECD); United Nations (UN); United Nations Conference on Trade and Development (UNCTAD); World Bank; World Intellectual Property Organization (WIPO)

**Observer Status for General Council pending**

African, Caribbean and Pacific Group (ACP); Arab Maghreb Union (AMU); Arab Monetary Fund (AMF); Arab Trade Financing Program (ATFP); Common Market for Eastern and Southern Africa (COMESA); Cooperation Council for the Arab States of the Gulf (GCC); Economic Cooperation Organization (ECO); European Bank for Reconstruction and Development (EBRD); European Free Trade Association (EFTA); International Textiles and Clothing Bureau (ITCB); International Telecommunication Union (ITU); International Vine and Wine Office (OIV); Islamic Development Bank (IDB); Latin American Economic System (SELA); League of Arab States (LAS); Organization of African Unity (OAU) ; Organization of American States (OAS); Organization of the Islamic Conference (OIC); Secretariat for the Central American Economic Integration (SIECA); South Centre; South Pacific Forum (SPF); United Nations Development Programme (UNDP); United Nations Environment Programme (UNEP); United Nations Industrial Development Organization (UNIDO); West African Economic and Monetary Union (WAEMU); World Customs Organization (WCO); World Health Organization (WHO)

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<sup>6</sup> *Ad hoc* observer status.

<sup>7</sup> As of March 2002 (WT/GC/W/470).